

1
2
3
4
5

6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9
10 UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

11 Plaintiff,

12 v.

13 GUILLERMO HERRERA, *et al.*

14 Defendants.

15
16 **ORDER DENYING APPLICATION
17 FOR LEAVE TO FILE MOTION FOR
18 RECONSIDERATION OF ORDER
19 GRANTING OLIVER MAROTA'S
20 MOTION TO QUASH SUBPOENAS**

21 As stated during the July 18 proceedings, defendant Guillermo Herrera's application for
22 leave to file a motion for reconsideration of the order quashing subpoenas *duces tecum* served
23 on counsel for Witness Oliver Marota is **DENIED** (Dkt. No. 4747).

24 Reconsideration is warranted when an application for leave to file a reconsideration
25 motion specifically shows that: (1) a material difference of fact or law exists from what was
previously presented *and the party applying for reconsideration did not know of the difference
of fact or law despite reasonable diligence*; (2) since the original order, new material facts or
law have emerged; or (3) there was a manifest failure by the district court to consider material
facts or dispositive legal arguments *which were presented to it*. Criminal L.R. 2-1; *School Dist.
No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

26 The application argues that reconsideration is appropriate because counsel was unaware
27 that the subpoenaed materials contained work-product protected materials and counsel
28 accordingly did not know a ruling may be made based on the work-product doctrine. This

1 assertion is not borne out by the record. The motion to quash specifically argued that the
2 subpoenas should be quashed because the work product protection had not been waived (Dkt.
3 No. 4720 at 7–10). Indeed, defendant Herrera’s written “response” to the motion (filed as a
4 separate motion to compel) argued that a voluntary waiver of the attorney-client privilege
5 automatically effectuates a waiver of the attorney work-product protection and provided
6 authority purportedly in support of this proposition (Dkt. No. 4724 at 8–9). This argument was
7 fully considered but ultimately rejected (Dkt. No. 4737). Counsel cannot now re-litigate the
8 matter based on arguments he failed to present despite the opportunity to do so. The original
9 order will not be reconsidered.

10

11 **IT IS SO ORDERED.**

12

13 Dated: July 20, 2011.

14



15
16
17
18
19
20
21
22
23
24
25
26
27
28

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE